## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO. 5:10-CT-3019-FL

JON'TA T. HAMPTON-BEY,	)	
Plaintiff,	)	
v.	)	ORDER
ROBERT C. LEWIS, et al.,	)	
Defendants.	)	

Jon'ta T. Hampton-Bey ("plaintiff"), a state inmate, filed this action pursuant to 42 U.S.C. § 1983. Presently before the court is plaintiff's request for voluntary dismissal (DE # 48). Also before the court is the motion to strike (DE # 35) filed by defendants Robert C. Lewis, Alvin W. Keller, and William Basnight. Finally, before the court is the motion to dismiss (DE # 36), filed by defendant Peter Woglom. In this posture, these matters are ripe for ruling.

An action may be dismissed voluntarily by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the plaintiff's request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2).

In this case, defendant Peter Woglom filed an answer. Because defendant Peter Woglom filed an answer, plaintiff's action may only be voluntarily dismissed pursuant to Rule 41(a)(2), which permits voluntary dismissal "on terms that the court considers proper." A plaintiff's motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the defendants. S.A. Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986).

As grounds for his request, plaintiff states that no irreparable harm has occurred, and that the issue in this action has been resolved. The court finds this reasons is consistent with Rule 41(a)(2). Additionally, the court finds that defendants will not be prejudiced by plaintiff's dismissal because the matter has been resolved. Moreover, defendants Peter Woglom, Robert C. Lewis, Alvin W. Keller, and William Basnight, III, through counsel, have filed a joint stipulation of dismissal. Accordingly, plaintiff's motion for voluntary dismissal without prejudice (DE # 48) is GRANTED and the remaining pending motions are DENIED as moot.

SO ORDERED, this the 27 day of January, 2011.

OUISE W. FLANA

Chief United States District Judge